

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SELIGER, MARK,

Plaintiff,

v.

BREITBART NEWS NETWORK, LLC, et
al.,

Defendants.

Case No. 1:20-cv-02860-ER

**DEFENDANT BREITBART NEWS
NETWORK, LLC's ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFFS COMPLAINT**

Defendant Breitbart News Network, LLC ("BNN"), by and through its undersigned counsel, Reed Smith LLP, answers the Complaint of Plaintiff Mark Seliger, dated April 6, 2020 ("Complaint"), as follows:

JURISDICTION AND VENUE

1. BNN admits that Plaintiff brings this action under the Copyright Act of 1976.
2. BNN admits that this Court has subject matter jurisdiction over federal copyright infringement claims pursuant to 28 U.S.C. §§ 1331 and 1338 (a) and (b).
3. The allegations in Paragraph 3 contain conclusions of law to which no response is required. To the extent a response is required, BNN denies the allegations in Paragraph 3.

PARTIES

4. BNN lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4, and on that basis denies those allegations.
5. The allegations in Paragraph 5 contain conclusions of law to which no response is required. To the extent a response is required, BNN denies the allegations in Paragraph 5.

6. BNN lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6, and on that basis denies those allegations.

7. The allegations in Paragraph 7 contain conclusions of law to which no response is required. To the extent a response is required, BNN lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7, and on that basis denies those allegations.

8. BNN lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8, and on that basis denies those allegations.

9. The allegations in Paragraph 9 stating that “Plaintiff owns the photography depicted in Exhibit A” is a conclusion of law to which no response is required. To the extent a response is required, BNN lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9, and on that basis denies those allegations.

10. BNN lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10, and on that basis denies those allegations.

11. BNN admits that Exhibit “B” references the following URL: <http://www.breitbart.com/big-journalism/2016/08/11/washington-post-trashes-ivanka-trump-fashion-shoot/>. The allegation stating that “Defendants, and each of them, have willfully copied, reproduced, displayed and distributed the Subject Photography for financial benefit and without the Plaintiff’s consent” is a conclusion of law to which no response is required. To the extent a response is required, BNN lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11, and on that basis denies those allegations.

12. BNN admits the allegations in Paragraph 12 and avers that no such consent is required as a matter of law.

FIRST CLAIM FOR RELIEF

(For Copyright Infringement – Against all Defendants, and Each)

13. BNN repeats and re-alleges its responses to the allegations contained in Paragraphs 1 through 12 as if fully set forth herein.

14. BNN admits only that it “accessed the photo.” BNN denies the remainder of the allegations in Paragraph 14.

15. BNN admits that the URL shown on Exhibit “B” contains a link to BNN’s website and that a cropped version of the subject photo is displayed in the article. BNN denies the remaining allegations in Paragraph 15.

16. The allegations in Paragraph 16 contain conclusions of law to which no response is required. To the extent a response is required, BNN denies the allegations in Paragraph 16.

17. The allegations in Paragraph 17 contain conclusions of law to which no response is required. To the extent a response is required, BNN denies the allegations in Paragraph 17.

18. The allegations in Paragraph 18 contain conclusions of law to which no response is required. To the extent a response is required, BNN denies the allegations in Paragraph 18.

19. The allegations in Paragraph 19 contain conclusions of law to which no response is required. To the extent a response is required, BNN denies the allegations in Paragraph 19.

SECOND CLAIM FOR RELIEF

(For Vicarious and/or Contributory Copyright Infringement – Against all Defendants, and Each)

20. BNN repeats and re-alleges its responses to the allegations contained in Paragraphs 1-19 as if fully set forth herein.

21. The allegations in Paragraph 21 contain conclusions of law to which no response is required. To the extent a response is required, BNN denies the allegations in Paragraph 21.

22. The allegations in Paragraph 22 contain conclusions of law to which no response is required. To the extent a response is required, BNN denies the allegations in Paragraph 22.

23. The allegations in Paragraph 23 contain conclusions of law to which no response is required. To the extent a response is required, BNN denies the allegations in Paragraph 23.

24. The allegations in Paragraph 24 contain conclusions of law to which no response is required. To the extent a response is required, BNN denies the allegations in Paragraph 24.

25. The allegations in Paragraph 25 contain conclusions of law to which no response is required. To the extent a response is required, BNN denies the allegations in Paragraph 25.

THIRD CLAIM FOR RELIEF

(For Violations of 17 U.S.C. § 1202 – Against all Defendants, and Each)

26. BNN repeats and re-alleges its responses to the allegations contained in Paragraphs 1-26 as if fully set forth herein.

27. BNN lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27, and on that basis denies those allegations.

28. Denied.

29. BNN admits that the URL shown on Exhibit “B” contains a link to BNN’s website. BNN denies the remaining allegations in Paragraph 29.

30. The allegations in Paragraph 30 contain conclusions of law to which no response is required. To the extent a response is required, BNN denies the allegations in Paragraph 30.

31. The allegations in Paragraph 31 contain conclusions of law to which no response is required. To the extent a response is required, BNN denies the allegations in Paragraph 31.

PRAYER FOR RELIEF

32. BNN denies the allegations in Plaintiff's Prayer for Relief. BNN contends that Plaintiff is not entitled to judgment. BNN further contends that Plaintiff is not entitled to any of the relief sought in subparagraphs (a)-(h), or otherwise.

AFFIRMATIVE DEFENSES

BNN asserts the following affirmative defenses in response to Plaintiff's Complaint, without intending to shift the burden to itself with respect to any such defenses to the extent that BNN does not bear such a burden under applicable law.

FIRST DEFENSE

Plaintiff's Complaint fails to state claim upon which relief may be granted against BNN.

SECOND DEFENSE

Plaintiff's claims are barred in whole by the applicable statutes of limitations. 17 U.S.C. § 507(b).

THIRD DEFENSE

BNN's use of the subject photo constitutes a non-infringing fair use as that term is defined in 17 U.S.C. § 107.

FOURTH DEFENSE

Plaintiff's claims are barred by the doctrine of waiver.

FIFTH DEFENSE

Plaintiff's claims are bared by the doctrine of estoppel.

SIXTH DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

SEVENTH DEFENSE

Plaintiff's claims are barred by the doctrine of laches.

EIGHTH DEFENSE

Plaintiff's claims are barred by the doctrine of misuse of copyright.

TENTH DEFENSE

Plaintiff's claims violate BNN's rights of free speech and freedom of the press guaranteed under the First Amendment to the United States Constitution.

ELEVENTH DEFENSE

The Court lacks personal jurisdiction over BNN. The Complaint should therefore be dismissed against BNN under Rule 12(b)(2) of the Federal Rules of Civil Procedure.

TWELFTH DEFENSE

Plaintiff is barred from pursuing his claims in the Southern District of New York because venue is improper, and the Complaint, and each purported claim contained therein, with respect to BNN, should be dismissed under Rule 12(b)(3) of the Federal Rules of Civil Procedure.

ADDITIONAL DEFENSES RESERVED

BNN has insufficient knowledge or information upon which to form a belief as to whether it may have additional, as yet unstated, defenses available. BNN expressly reserves the right to assert additional defenses in the event that discovery indicates that such defenses are appropriate.

WHEREFORE, BNN demands a judgment dismissing the Complaint in its entirety, together with the costs, disbursements and reasonable attorneys' fees incurred in this action, together with such other and further relief as the Court may deem just and proper.

Dated: New York, New York
July 9, 2020

By: /s/ Avery I. Normyle
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LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 9, 2020 I electronically filed the foregoing documents with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of parties of record.

/s/ Avery I. Normyle
Avery I. Nagy-Normyle, Esq.